IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18043 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARDASBHAI VARTABHAI - Petitioner(s)
Versus
THE STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MS SJ SHEIKH for Petitioner(s) : 1,
MR NEERAJ SONI A.G.P. for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 25/07/2007

ORAL JUDGMENT

1. **RULE**. Mr. Neeraj Soni learned A.G.P., waives service of rule on behalf of the respondents. At the request of the learned advocates for the respective

parties, the matter is taken up for final hearing today itself.

2. The petitioner runs eating house in the name and style of “Vadvada Parotha House” adjoining the National Highway no. 8A on Survey No. 423, 46.1 at Chotila. According to the petitioner, he was served with order dated 13th February, 2006 issued by the Collector calling upon him to remove the encroachment. Against the said order, the petitioner preferred revision application before respondent no. 1. Respondent no. 1 heard the revision application and remitted the matter to the Collector for his re-consideration keeping in view the observations made in the said order. The matter is pending before the Collector for consideration. According to the petitioner, in the meantime, the Sub-Divisional Magistrate, i.e., respondent no. 2 passed an order dated 17th October, 2006 for sealing the premises. In pursuance thereof, the kitchen of the petitioner is now sealed and he is not allowed to carry on the business.

3. I have heard Mr. S. S. Shaikh learned advocate appearing with Mr. S.J. Shaikh for the petitioner and Mr. Soni learned A.G.P., for the respondents. It is submitted by the learned advocate for the petitioner that in

identical circumstances this Court has delivered a decision in the case of Bambhaniya Narendrabhai Rameshbhai v. State of Gujarat & Ors in Special Civil Application No. 25333/2006 dated 8th May, 2007. By the said decision, this Court has directed the respondents to remove the seal and permit the petitioner to carry on the business. Of course, it is subject to the outcome of the issue pending before the Collector. Mr. Soni learned A.G.P., is not in a position to distinguish the facts of this case from the facts of the case from the relied on by Mr. Shaikh. In view of the same, in the present case also, impugned order is quashed and set aside and the respondents are directed to remove the seal and permit the petitioner to carry on the business. This will be subject to final outcome of the issue pending before the Collector.

4. The petition is, therefore, allowed. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

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